TRUTH

VOL. 4; No. 37 SALT LAKE CITY, UTAH, MAY 27, 1905. PRICE 5 CENTS

The "Ten-Hour Law" Decision.

"No more important decision has been rendered by a high court of law for a hundred years," declares Justice Harlan of the United States Supreme Court.

On April 17th, the Supreme Court decided the famous case of Lochner vs. New York. The court, by a majority of one, held the New York statute limiting employment in bakeries to sixty-four hours a week and ten hours a day to be an arbitrary interference with the freedom to contract guaranteed by the fourteenth amendment to the Constitution of the United States, and cannot be sustained as a valid exercise of the police power to protect the public health, safety, morals or general welfare.

The opinion of the court was delivered by Justice Peckham, who, prior to his appointment, as an associate justice of the United States Supreme court, was an associate justice of the Court of Appeals of New York. Chief Justice Fuller and Justices McKenna, Brewer and Brown concur, while Justices Holmes, Harlan, White and Day dissent. Justices Holmes and Harlan each wrote a dissenting opinion, giving their reasons therefor.

A short history of the case will prove interesting and instructive. Lochner was indicted under the New York law for permitting an employee to work for him in his cake, bread and biscuit bakershop at Utica, N. Y., more than sixty hours a week, after having been theretofore guilty of a similar offense. He was found guilty of a misdemeanor and sentenced to pay a fine of $50. He appealed to the Supreme court of the state, and then to the Court of Appeals, each of said courts affirming the decision of the lower court. Rather than have his name everlastingly besmirched for such a trifling matter, he took the case with all possible speed to the greatest tribunal in the world, the United States Supreme court; and that court, after being greatly puzzled over the questions presented, and as evenly divided as it was possible to be, thus showing great fairness, reversed the state courts, and each and all, and found Lochner "not guilty," because the New York statute was in violation of the Supreme law of the land, as declared in the fourteenth amendment. The tarnish was thus removed from Lochner's name, and he is now at liberty to make as many contracts as he can binding his employes to work sixty or one hundred and sixty hours a week, catch as catch can. What does it matter to the public whether the ordorous vapor from the continuous performer called the employee, mingles with the bread, cake and pie, turned out in the shop, the sacred right of contract, guaranteed by the fourteenth amendment, is kept inviolate. It would be cruelty to animals to work a horse an unreasonable number of hours in a day, but the horse has no mind to meet in contract with his owner, and therefore the owner can be punished if he abuses the animal, but the employee has a mind to meet with that of his employer in contract, and the employee has a moral and a legal duty to support his wife and family, and if the employer, taking advantage of the necessities of the employee, can get him to enter into a contract to work excessive hours, which is injurious to the employee's health, with no time left to improve himself mentally, or to devote to his family or enjoy their society, and the state is powerless to interfere, then man with a mind to contract has fallen below a horse without a mind, and cannot receive the same protection by law as an animal.

Except for this fourteenth amendment, this employee could have the protection of an all-powerful state when he would be too weak to protect himself. The people, when the full meaning of this decision has been once impressed on their sensibilities, will demand a repeal of or a change in the fourteenth amendment. Slavery by contract is just as odious as slavery by force. One is just as much a compulsory slavery as the other. The police powers of the state have been limited to such an extent by this decision that merciless employers are placed above and beyond the reach of law. The trusts have won another victory. The sharp contractors, the shrewd shylocks, are, according to this decision, the special proteges of the fourteenth amendment. They can take in labor the last drop of blood, the last pound of flesh of the employe without danger, either to life, liberty or loss of dollars. The employer is favored far more than the money-lender. It is constitutional to pass laws against excessive rates of interest, usurious rates as it is called, but not now against excessive hours of labor. We do not wish to be understood as casting reflections upon the justices of the Supreme court, who favored the majority opinion in this case. We hold a deep reverence and a profound respect for this great tribunal, and thoroughly believe in the honesty, integrity of its justices, but being human, it is possible for them to err. We therefore hold that each and every citizen has the right to examine and criticize the decisions of that court, and to turn the lime light of reason thereon. The majority of the people are possessed of wisdom as well as the majority of that court, and will find a way to prevent the evil threatened by the seemingly unreasonable construction placed on the fourteenth amendment.

The error of a majority of the justices was in believing they knew more about bakeshops than did a majority of the people of the state of New York. The justice who wrote the opinion showed by his statements that he knew as little of bakeshops as he did of mines. He says, in referring to the case of Holden vs. Hardy, 169 U. S. 366, (a Utah case): "A provision in the act of the legislature of Utah was there under consideration, the act limiting the employment of workmen in all underground mines or workings, to eight-hours per day, 'except in cases of an emergency, where life or property is in imminent danger * * * "The act was held to be a valid exercise of the police powers of the state." * * * "The statute now before this court has no emergency clause in it, and, if the statute is valid, there are no circumstances and no emergencies under which the slightest violation of the provisions of the act would be innocent.

"There is nothing in the Holden v. Hardy case, which covers the case before us."

Everybody in a mining country will at once perceive the reason for an emergency clause in the case of underground mines, but why an emergency clause in a law in reference to a bakery?

It would appear to be ridiculous to have put an emergency clause in the New York law. It was surplusage in the "eight hour" law of Utah. No one could be punished in this state where men worked to save life or property if there were no emergency clause attached to the law.

Again he says: "The case of Jacobson vs. Massachusetts, 197 U. S. 11, related to compulsory vaccination, and the law was held a valid exercise of the police powers with reference to the public health." The state can, according to the latter decision, compel a man, in perfect health, to be vaccinated, for the protection of the public health and public safety, endangered by the presence of a dangerous disease. According to the theory of those favoring vaccination, only those who refused to obey the law by being vaccinated, would have their health endangered by the presence of this dangerous disease, and yet these people would have no right to complain because of their violation of the law. How could a perfectly healthy man endanger the lives and health of a community, all vaccinated, by refusing vaccination? If he took it, he could not communicate it to the others, and he would be the only sufferer. According to our Supreme court, a perfectly healthy man can be laid hold of by the strong arm of the police law of the state and his cuticle scraped or punctured and a virus injected therein without his consent for the protection of his health or life from a dangerous disease, but a man can sweat himself to death by contract in a bakeshop, and the state hasn't any power to interfere, even if a majority of its citizens believe that his health is being permanently impaired by reason of his excessive labor. No wonder that the average citizen's brain becomes somewhat chaotic in trying to understand the nice distinctions made by courts in expounding the law.

In the case of Petit v. Minnesota, 177 U. S. 164, the court held that the state had the right to keep barber shops from opening on Sunday as a proper exercise of police power of the state. The present case holds that it would be void for a state to make a law prohibiting employees in bakeshops from contract to work on Sunday, if they chose to make such contracts. Such would be a fair infer-